

## AMENDMENTS TO THE CLAIMS

The following is a complete listing of the claims.

1. (Currently amended) A plant seed mixture for identifying seed with a genetically modified ~~proprietary~~ trait using a phenotypic marker comprising:
  - about 90% to about 99.59% by weight of primary seeds for a transgenic plant variety with a genetically modified trait, said primary seeds having ~~the~~ a dominant seed coat color of said plant varietal seeds; and
  - about 0.51 % to about 10% by weight of secondary seeds ~~of the same or different plant variety, said secondary seeds with or without a genetically modified trait, said secondary seeds~~ being of the same plant species as the primary seeds, wherein the secondary seeds are comprised of seeds of one or more different plant varieties and having one or more seed coat color differences from the dominant seed coat color. having a seed coat color with at least one phenotypical difference from the primary seed coat color.
2. (Currently amended) The plant seed mixture of claim 1 wherein the secondary seeds are homozygous for a ~~the phenotypical difference of~~ seed coat color difference.
3. (Currently amended) The plant seed mixture of claim 1 wherein the secondary seeds are a mixture of homozygous seeds and heterozygous seeds for a ~~the phenotypical difference of~~ seed coat color difference.
4. (Original) The plant seed mixture of claim 1 wherein the plant is soybean, canola or wheat.

5. (Original) The plant seed mixture of claim 1 wherein the plant is soybean and the seed coat color of the secondary seeds can be determined by measuring the total light reflectance with a near-infrared spectrophotometer for wavelengths from 550 to 650 nanometers or by optical scanning technology.
6. (Original) The plant seed mixture of claim 5 wherein the seed coat color of the secondary seeds is homozygous black.
7. (Original) The seed mixture of claim 6 wherein the homozygous black seed is RriiTT or the RRiiTT genotype.
8. (Original) The seed mixture of claim 5 wherein the seed coat color of the secondary seeds is brown.
9. (Original) The seed mixture of claim 8 wherein the brown seed is rriiTT genotype.
10. (Original) The seed mixture of claim 5 wherein the seed coat color of the secondary seeds is heterozygous yellow.
11. (Currently amended) The seed mixture of claim 5 wherein the ~~seed coat color of the~~ secondary seeds are is a mixture of seeds with heterozygous yellow seed coat color and seeds with homozygous black seed coat colors.
12. (Currently amended) The seed mixture of claim 5 wherein the ~~seed coat color of the~~ secondary seeds are a mixture of seeds with heterozygous yellow seed coat color and seeds with homozygous brown seed coat color ~~is a mixture of heterozygous yellow and brown seed coat colors.~~
13. (Currently amended) The seed mixture of claim 1 wherein the primary seeds contain two ~~one~~ or more genetically modified traits.

14. (Currently amended) A method of using at least one phenotypical marker to identify seed with a genetically modified proprietary trait comprising:

i) generating a seed plant mixture comprising:  
about 90% to about 99.59 % by weight of primary seeds for a transgenic plant variety with a genetically modified trait, said primary seeds having ~~the a~~ a dominant seed coat color of said plant varietal seeds; and having a first seed coat color genotype; and

about 0.51 % to about 10% by weight of secondary seeds of ~~the same or different plant variety, said secondary seeds with or without a genetically modified trait, said secondary seeds being of the same plant species as the primary seeds, wherein the secondary seeds are comprised of seeds of one or more plant varieties, having one or more seed coat color genotypes different from the first seed coat color genotype, and having one or more seed coat color differences from the dominant seed coat color; having at least one seed coat phenotypical marker difference of seed coat color.~~

ii) planting and growing the seed plant mixture to produce plants and grain;

iii) harvesting the grain from the plants;

iv) taking a seed sample of the grain; and

v) determining the ratio amount of the seeds having at least one of the seed coat color differences from the dominant seed coat color-coat phenotypical marker in the seed sample,

vi) comparing the ratio of the seeds having at least one of the seed coat color differences from the dominant seed coat color with the predicted ratio of the seeds having the difference or differences in seed coat color from the dominant seed coat color to identify seed with the genetically modified trait,

wherein the seed coat color genotypes of the primary and secondary seeds present in the seed plant mixture are known so that the ratio of the seeds having at least one of the seed

coat color differences from the dominant seed coat color in a seed sample of grain harvested from plants grown from the seed plant mixture can be predicted.

15. (Currently amended) The method of claim 14 wherein the secondary seeds are homozygous for a seed coat color different from the dominant seed coat color. ~~are homozygous for the seed coat color of the secondary seeds.~~
16. (Currently amended) A method of generating ~~hybrid-commercial~~ soybean seed heterozygous for seed coat color of cultivars containing proprietary traits, the method comprising:
  - i) planting homozygote black seed coat soybean plants in separate, alternate rows in the same field as cultivars containing the proprietary traits;
  - ii) harvesting the grain; and
  - iii) replanting the grain and harvesting the grain over at least one additional generation.
17. (Original) The method of claim 16 wherein the black seed coat seeds are used to create a mechanical mix of seeds comprising:
  - i) separating the black seed coat seeds from the harvested grain;
  - ii) propagating the black seed coat seeds through at least one generation of self-pollination; and
  - iii) mixing a known quantity of black seed coat seed with seed of the yellow seed coat variety.
18. (Original) The method of claim 17 further comprising growing the mixture containing a known quantity of black seed coat seeds with the commercial cultivar seeds in the last season of seed increase prior to commercial sale.